

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

ALAN OWENS,

Plaintiff,

vs.

HEALTH CARE SERVICE CORP.,

Defendant.

CV-16-95-BMM-JTJ

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS**

Plaintiff Alan Owens filed a Motion to Remand claiming that the Court lacks jurisdiction over the matter at issue because the Federal Officer Removal Statute does not apply and because federal common law does not govern the insurance policy HCSC provided to Mr. Owens. (Doc. 13.) United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on December 16, 2016. (Doc. 30.) Neither party filed objections.

When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). This Court will review Judge Johnston's Findings and Recommendations,

however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston recommended that the Court deny Mr. Owens' Motion to Remand. (Doc. 30 at 13.) Judge Johnston determined, however, that this action lacks federal question jurisdiction. Judge Johnston cited to a United States Supreme Court opinion in support of this conclusion. *Empire HealthChoice assurance, Inc. v. McVeigh*, 547 U.S. 677 (2006). The Court in *Empire* held that federal common law does not govern the insurance plan at issue in this case. *Id.* Judge Johnston likewise concluded that federal common law does not govern the Plan. This conclusion precludes federal question jurisdiction in this Court.

Judge Johnston determined that the Court possesses jurisdiction under the Federal Officer Removal statute. (Doc. 30 at 8-12.) Under the Federal Officer Removal Statute, Congress allows for the removal of civil actions against entities acting under a federal officer or agency for, or relating to, any act the entity commits under color of federal office. 28 U.S.C. § 1442(a)(1). The controlling issue with respect to the statute's applicability in this case is whether the defendant acted under color of federal office. Judge Johnston concluded that HCSC acted under the Office of Personnel Management (OPM), a federal agency. (Doc. 30 at 12.) Judge Johnston consequently determined that the Federal Officer Removal Statute applies to the case at issue.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full. The Federal Officer Removal Statute applies to, and allows for, the removal of this case to a federal court.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 30) is ADOPTED IN FULL.

IT IS FURTHER ORDERED that Plaintiff Alan Owens's Motion to Remand (Doc. 13) is DENIED.

DATED this 10th day of January, 2017.



Brian Morris
United States District Court Judge